

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAIME LOREE ARMIJO, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

Case No.: 1:17-cv-00440-LF-KK

FEDEX GROUND PACKAGE SYSTEM, INC.,
a foreign company,

Defendant.

FEDEX GROUND PACKAGE SYSTEM, INC.'S MOTION TO DISMISS IN PART

Defendant FedEx Ground Package System, Inc. (“FXG”) moves under Rule 12(b)(6) and 12(f) of the Federal Rules of Civil Procedure and Local Rule 7.1 of the District of New Mexico to dismiss in part Plaintiffs’ Class Action Complaint and Jury Demand, 1:17-cv-00440, ECF No. 1 (“Complaint”), for failure state a claim.

First, Plaintiff Armijo’s claim (Count II) under a purported “unauthorized deductions statute” fails as the statute on which Plaintiff relies has no applicability to the deductions at issue in this case. Rather, the statute applies only to an assignment of an employee’s wages to a third party and is irrelevant to the circumstances Plaintiff alleges. Second, Plaintiff Armijo’s equitable unjust enrichment claim fails as her claims are grounded entirely in the terms of the Operating Agreement. Where, as Plaintiff alleges here, a contract controls the relationship, an unjust enrichment claim cannot be sustained under New Mexico law. Finally, even if Plaintiff Armijo were to succeed on Count I of her Complaint and recover unpaid overtime wages (which FXG disputes), she cannot, as a matter of law, recover liquidated damages under the New Mexico Minimum Wage Act. Plaintiff Armijo’s request for liquidated damages therefore must be stricken.

As required by District of New Mexico Local Rule 7.1(A), counsel for FXG sought concurrence from counsel for Plaintiffs on June 13, 2017. Counsel for FXG explained the nature of this motion and its legal basis and Plaintiff’s counsel indicated Plaintiff would oppose the relief requested.

Dated: June 15, 2017

Respectfully submitted,

s/ Jessica G. Scott

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Attorneys for Defendant FedEx Ground Package
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CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on this 15th day of June, 2017, a true and correct copy of the foregoing **FEDEX GROUND PACKAGE SYSTEM, INC.'S MOTION TO DISMISS IN PART** was filed electronically on the C/M ECF website. Notice of this filing will be sent to the following counsel of record by operation of the Court's CM/ECF system.

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